DEPARTMENT OF STATE REVENUE
SUPPLEMENTAL LETTER OF FINDINGS: 99-0119
International Fuel Tax Agreement (IFTA)
For the Tax Periods 1995, 1996, and 1997

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ISSUES

I. Applicability of IFTA Regulations to Taxpayer's Single-Axle Trucks.

Authority: IC 6-8.1-3-14; Indiana Dep't of Natural Resources v. United Minerals, 686 N.E.2d 851 (Ind. Ct. App. 1997); IFTA Articles of Agreement R245.

Taxpayer argues that the Department incorrectly concluded that its fleet of "single-axle" trucks came within the purview of the International Fuel Tax Association (IFTA) regulations.

II. Sufficiency of Documentation Upon Which Taxpayer Was Assessed Additional Fuel Tax Liability.

Authority: IC 6-6-4.1-9; IC 6-8.1-5-4(a); IFTA Audit Manual A550.100.

Taxpayer argues that the audit's determination of additional fuel tax liability was based upon insufficient and inadequate documentation. Accordingly, based upon information which the taxpayer is now able to provide, taxpayer is entitled to a supplemental audit which will, presumably, decrease its tax liability.

III. Abatement of the Ten-Percent Negligence Penalty.

Authority: IC 6-8.1-10-2.1; 45 IAC 15-11-2(b); 45 IAC 15-11-2(c).

Taxpayer requests that that Department exercise its discretion to abate the ten-percent negligence penalty assessed against the taxpayer following the audit of taxpayer's existing records.

STATEMENT OF FACTS

Taxpayer operates a small fleet of trucks both within the state and within neighboring states. The Department conducted an audit of the taxpayer's records for the years at issue. The audit determined that the taxpayer did not maintain documentation sufficient to arrive at a conclusive determination of the taxpayer's fuel tax liability. In the absence of that documentation, the audit based its determination of the additional fuel tax liability upon the "best information available." That information included: fuel and mileage records available for three of the four quarterly 1997

periods; records available from taxpayer's fuel supplier; a summary estimate prepared by taxpayer's representative; and information available on taxpayer's International Registration Plan (IRP) records.

Based upon that available information, the audit determined that taxpayer was liable for additional fuel tax. Taxpayer protested that determination, an administrative hearing was held, and this Supplemental Letter of Finding resulted.

Because taxpayer's initial protest was based upon various assertions – including references to the federal Paperwork Reduction Act – the precise scope of taxpayer's protest was discussed and defined during the administrative hearing. It was agreed that taxpayer's protest was predicated upon the issues as summarized within this Supplemental Letter of Findings. That determination was confirmed with taxpayer's representative both during the hearing and in a written letter subsequent to the hearing.

At the time of the initial protest, taxpayer challenged the basis for the additional IRP assessment determined at the time of the audit encompassing the 1995 through 1997 tax periods. Though not specifically addressed during the hearing process, presumably the protest issues raised by taxpayer apply with equal force to that IRP assessment. The determinations contained within this Supplemental Letter of Findings are concomitant to the audit's IRP assessment.

I. Applicability of IFTA Regulations to Taxpayer's Single-Axle Trucks.

According to taxpayer, its vehicles do not come within the purview of the IFTA regulations and that, consequently, it was not required to maintain the records requested during the audit. Taxpayer's argues that it operates a fleet of "single-axle" vehicles weighing more than 26,000 pounds. Taxpayer asserts that the term "axle" is commonly understood within the transportation industry as a powered axle – that is an axle which is attached to the vehicle's engine by means of a transmission. Therefore, IFTA's references to vehicles having two or three axles are references irrelevant to taxpayer's own fleet of "single-axle" vehicles.

IFTA is an agreement between various United States jurisdictions and Canada allowing for the equitable apportionment of previously collected motor fuel taxes. The agreement's goal is to simplify the tax, licensing, and reporting requirements of interstate motor carriers such as taxpayer. The agreement itself is not a statute but was implemented in Indiana pursuant to the authority granted under IC 6-8.1-3-14.

Accordingly, the authoritative regulation relevant to taxpayer's assertion is found at IFTA Articles of Agreement R245. The regulation states as follows:

> Qualified Motor Vehicle means a motor vehicle used, designed, or maintained for transportation of persons or property and:
>
> > .100 Having two axles and a gross vehicle weight or registered gross vehicle weight exceeding 26,000 pounds or 11,797 kilograms; or
> >
> > .200 Having three or more axles regardless of weight; or

> .300 Is used in combination, when the weight of such combination exceeds 26,000 pounds or 11,797 kilograms gross vehicle or registered gross vehicle weight. Qualified Motor Vehicle does not include recreational vehicles.

As listed above, the language contained within IFTA Articles of Agreement R245 was adopted in 1992 and, as written, was in effect during the tax years here at issue.

Taxpayer's argument, that the term "axle" as used within IFTA Articles of Agreement R245, refers only to "powered" axles, is without substance. There is absolutely nothing within the Articles of Agreement, explanations, footnotes, manuals, or exemptions which so constrains definition of the term. Taxpayer argues for a specialized and limited definition of the term "axle" which is unwarranted because "[w]ords in an administrative regulation are to be given their plain and ordinary meaning." Indiana Dep't of Natural Resources v. United Minerals, 686 N.E.2d 851, 854 (Ind. Ct. App. 1997). Although it may be fair to argue that regulatory language is often obscured by convoluted and overly technical language, taxpayer has presented nothing of substance which authoritatively refutes the plain and ordinary definition of "axle" as "[a] supporting shaft or member upon which a wheel or a set of wheels revolves." American Heritage Dictionary of the English Language 93 (4th ed. 2000); *See also* Webster's II New Riverside University Dictionary 143 (1988). Taxpayer's vehicles, having two axles and weighing more that 26,000 pounds, fall squarely and explicitly within the purview of IFTA Articles of Agreement R245.

FINDING

Taxpayer's protest is respectfully denied.

II. Sufficiency of Documentation Upon Which Taxpayer Was Assessed Additional Fuel Tax Liability.

Taxpayer argues that the audit relied on incomplete records upon which to determine the taxpayer's additional fuel tax liabilities. Taxpayer maintains that the audit discounted or ignored the available records because those records were not presented in a format amenable or convenient to the audit.

During the audit, the taxpayer was unable to produce complete fuel and mileage records for certain of the periods under review. Taxpayer was unable to produce authoritative records for the years 1995, 1996, and for the first quarter of 1997. Taxpayer was able to provide records for the second, third, and fourth quarters of 1997. As an alternative, the audit relied upon a single-page summary prepared and provided by the taxpayer. On that summary, taxpayer provided information concerning the amount of fuel purchased, total miles, miles driven within each jurisdiction, the estimated cost of the fuel, and an estimated fuel consumption rate of five miles-per-gallon. The audit also relied upon corresponding IRP records, records available from taxpayer's fuel supplier, and taxpayer's trip sheets.

The audit accepted certain of the taxpayer's estimates and modified others. For example, the audit accepted the mileage records for the second, third, and fourth quarters of 1997. However, the audit declined to utilize the five mile-per-gallon estimate provided by the taxpayer representative and chose to use a four mile-per-gallon figure as mandated under IC 6-6-4.1-9 and

permitted under IFTA Audit Manual A550.100. Despite the absence of the corresponding trip sheets, the audit accepted the reported total mile figures as reported. The audit accepted and utilized the taxpayer's fuel price estimate in arriving at its conclusions. Similarly, the audit accepted and utilized the taxpayer's estimates in arriving at the jurisdictional miles and in arriving at the jurisdictional fuel consumption.

Taxpayer argues that the audit capriciously rejected the available records because those records were not in a format amenable to the Department. To the contrary, there is every indication that the audit relied upon the accuracy and completeness of both the taxpayer's contemporaneous and reconstructed records in an entirely reasonable attempt to reconstruct the otherwise missing fuel and mileage records. There is no indication that the audit rejected out-of-hand any of the information provided by the taxpayer.

Taxpayer challenges the four mile-per-gallon fuel consumption rate employed by the audit. Taxpayer argues that it can now provide records demonstrating that its vehicles currently obtain significantly better fuel economy and the current figures should be used to arrive at a projection of fuel consumption – for the tax years at issue – more favorable to the taxpayer. Taxpayer's request must be respectfully rejected. The four mile-per-gallon figure comports equably with the taxpayer's own estimate of five miles-per-gallon originally prepared by taxpayer's own representative and submitted at the time of the audit. The audit's use of the four mile-per-gallon rates is explicitly allowed under IC 6-6-4.1-9 which states that "[i]f there are no records showing the number of miles actually operated per gallon of motor fuel and if section 11(c) of this chapter is inapplicable, it is presumed for purposes of this chapter that one (1) gallon of motor fuel is consumed for every (4) miles traveled." Any reexamination of the taxpayer's available records would, by sheer necessity, necessitate various projections, estimates, and extrapolations to arrive at a re-construction of taxpayer's fuel tax liability. Such a reexamination would result in a determination either more or less favorable to the taxpayer. However, given the entirely common sense manner in which the original audit was conducted, the paucity of contemporaneous substantive records, and the likelihood that a reexamination of those records would little alter the original audit's conclusions, taxpayer's invitation to conduct a supplemental audit must be declined.

Taxpayer complains strenuously of the Department's "screw-ups," "books cooking," and reliance upon "fuzzy numbers." However, the solution to these various difficulties may be found with taxpayer's own diligence in maintaining and preserving accurate and complete records that can be made available during any subsequent audit. As set forth in IC 6-8.1-5-4(a):

> Every person subject to a listed tax *must* keep books and records so that the department can determine the amount, if any, of the person's liability for that tax by reviewing those books and records. The records referred to in this subsection include *all* source documents necessary to determine the tax, including invoices, register tapes, receipts, and canceled checks. (*Emphasis added*).

FINDING

Taxpayer's protest is respectfully denied.

III. Abatement of the Ten-Percent Negligence Penalty.

The taxpayer protests the Department's imposition of the ten-percent penalty assessment. IC 6-8.1-10-2.1 requires that a ten-percent penalty be imposed if the tax deficiency results from the taxpayer's negligence. Department regulation 45 IAC 15-11-2 provides guidance in determining if the taxpayer was negligent.

Departmental regulation 45 IAC 15-11-2(b) defines negligence as "the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer." Negligence is to "be determined on a case-by-case basis according to the facts and circumstances of each taxpayer." Id.

IC 6-8.1-10-2.1(d) allows the Department to waive the penalty upon a showing that the failure to pay the deficiency was based on "reasonable cause and not due to willful neglect." Departmental regulation 45 IAC 15-11-2(c) requires that in order to establish "reasonable cause," the taxpayer must demonstrate that it "exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed . . . ."

Taxpayer argues that it demonstrated reasonable care by directing various inquiries to the Department in order to determine whether its vehicles fell within the purview of IFTA. According to taxpayer, the Department failed to either respond to the taxpayer's requests for information or to supply a definitive answer. However, copies of taxpayer's correspondence with the Department refutes the implication that the Department entirely failed to respond to taxpayer's request for information because the correspondence itself acknowledges prior receipt of information from the Department. There is nothing in the information supplied by taxpayer indicating that the Department misled or misinformed taxpayer or that taxpayer – to its detriment – relied upon the Department in concluding that it did not come within the record keeping provisions of IFTA.

Taxpayer's argument, that it exercised reasonable care in concluding that it was not subject to the IFTA record keeping requirement, does not withstand close scrutiny. Taxpayer's own records indicates that sometime during 1997, it realized the necessity of keeping complete IFTA records. Similarly, taxpayer's assertion that it was previously unaware of those record keeping requirements, does not justify abatement of the ten-percent negligence penalty. As plainly set out in 45 IAC 15-11-2(b), "Ignorance of the listed tax laws, rules and/or regulations is treated as negligence."

FINDING

Taxpayer's protest is respectfully denied.

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